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FAMILY COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY PART 6

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IN THE MATTER OF:

ACS-NY,

Petitioner,

Docket No.:
NN-45041-14

Vs.

JASMINE BRIDGFORTH and
DELANO BROADUS,

Respondents.

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June 10, 2015

HELD AT:

FAMILY COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY
CITY OF NEW YORK
60 Lafayette Street
New York, NY 10013

BEFORE:

HONORABLE EMILY M. OLSHANSKY,
Judge

APPEARANCES:

ELIZABETH VERILLO, ESQ.
Attorney for the Petitioner

JESSICA WEIDMANN, ESQ.
Attorney for the Respondent Father

TEGHAN DELANE, ESQ.
Attorney for the Respondent Mother

MELISSA FRIEDMAN, ESQ.
CAROLYN KALOS, ESQ.
Attorneys for the Children

TRANSCRIBER:

LOUISA RETTLER
LYNN M. REINHARDT



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1 Broadus father.

2 THE CLERK: Have a seat. And you swear to
3 tell the truth?

4 MS. JASMINE BRIDGEFORTH: Yes.

5 THE CLERK: Your name and relationship?

6 MS. BRIDGEFORTH: Jasmine Bridgeforth, I'm
7 Fi s mother.

8 THE CLERK: Thank you.

9 THE COURT: Good morning everybody.

10 MR. BROADUS: Good morning.

11 THE COURT: So I know some people--I--
12 whatever happened with scheduling I'm sorry. We had
13 it for some time. I know that other people had it
14 for another--I apologize. And so given that, I
15 believe we have a decision on the objection which we
16 can distribute or it may be that Ms. Mulan already
17 did.

18 MS. DELANE: She did. I have it.

19 MS. VERILLO: Yes.

20 MS. WEIDMANN: Ms. Mulan did distribute
21 decisions on the objection as to the record.

22 THE COURT: Right, right.

23 MS. WEIDMANN: So I think there is still
24 the outstanding issue of the objection to the
25 testimony by Officer Sanchez.

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1 THE COURT: Okay. So put it on for
2 continued fact finding. And permanency hearing. Yes
3 Ms. Delane?

4 MS. DELANE: One last thing, Your Honor.

5 THE COURT: Yes.

6 MS. DELANE: [Background Noise] the
7 graduation is soon. And I realize that the order by
8 the agency might not exercise a discretion for
9 unsupervised visits. But then I'd ask that Ms.
10 Bridgeforth be permitted to attend. It's her
11 preschool graduation. I just wanted to make sure if
12 it's an issue with anyone.

13 THE COURT: Okay.

14 MS. VERILLO: I mean I know that Ms.
15 Bridgeforth previously had visits that were
16 supervised by the foster parent. So I would assume
17 that with the foster parent present that in itself
18 should not be--

19 MS. DELANE: [Interposing] Okay.

20 MS. VERILLO: --an issue.

21 THE COURT: Okay.

22 MS. VERILLO: But if it is, I'll email
23 counsel and--

24 THE COURT: [Interposing] Okay. Okay. And
25 so everybody just in terms of the excited utterance,

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1 I'm--I would hold that the statement testified to by
2 the police officer on the prior trial date was not an
3 excited utterance. I think that in many ways it's a
4 close case. There are many factors. If they were
5 slightly different, would have created this, would
6 have allowed the Court to hold that this is an
7 excited utterance. However, as the Courts in New
8 York State have held, the Courts consider numerous
9 factors in determining whether or not a statement is
10 made should qualify as an exception to the hearsay
11 rule. And just generally speaking, it must be that
12 at the time the utterance was made, the declarant was
13 under the stress of excitement caused by an external
14 event, sufficient to still his reflective facilities.
15 Thereby preventing opportunity for deliberation which
16 might lead the declarant to be untruthful. Just
17 citing Richardson on evidence and the Courts have
18 looked at a number of different factors in
19 determining whether or not a statement in any
20 particular case is an excited utterance. The
21 decisive factor has been held to be whether or not
22 the surrounding circumstances reasonably justify the
23 conclusion that the remarks were not made under the
24 impedance of studied reflection. There are too many
25 holes in the narrative provided to the Court to allow

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1 this Court to make the determination that the
2 declarant statement to the police officer or the
3 declarant statement to the operator was an excited
4 utterance. One thing we don't have the 911 tape.
5 Didn't have the ability to determine the impact on
6 the declarant, whether the declarant was in fact or
7 appeared in fact to be excited, upset, under the
8 influence of the startling event. Additionally, it's
9 not clear to me from the record, the officer
10 testified that he spoke with the declarant
11 approximately 15 minutes after the phone call. But
12 it's not completely clear to me what the event or
13 condition is in the instant case that is being
14 purported to be the startling or exciting event.
15 It's suggested that the declarant was held against
16 her will. And if the Court attempted to examine all
17 of the surrounding circumstances, it would look to
18 the evidence that was recovered in the apartment.
19 And according to the declarant, the declarant was
20 tied up. There was no evidence to show that, there
21 is no physical evidence to show that the declarant
22 was in fact tied up. The child's statements,
23 although vaguely suggestive of possibly observing--I
24 believe the child said that men and women came to the
25 house. They dressed up. Women wore high heels.

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1 They partied. I think she said that she observed
2 somebody to be tied up. And but the question is
3 whether this is an excited utterance and again, the
4 woman made the phone call. We don't know who the
5 woman is. We don't know what the event is that led
6 to the phone call. We don't know what the event is
7 that happened. I understand everybody's very upset
8 and disagrees with me very much. So you'll you know
9 avail yourself in whatever you believe to be the
10 appropriate avenues for appeal. Again, cases have
11 held that it's not--it's not necessary that there be
12 independent evidence of what was the exciting event.
13 And many other state courts have held that the
14 startling event or condition may be proved by
15 circumstance evidence. And as an example, the Court
16 find in Illinois case, it's an Illinois murder case,
17 People v. Leonard, in that case as an example of the
18 Court inferring the nature of the startling event or
19 condition, and allowing it to be proved by
20 circumstantial evidence, in that case the Court
21 approved the admission of testimony from a witness.
22 That at approximately 1:00 a.m. in the morning, the
23 crime victim made a telephone call and said, "He's
24 got a gun." And in that case, although the phone
25 call didn't provide detail about the underlying

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1 incident and what actually took place there, three
2 other witnesses were called to testify that at
3 approximately 1:00 a.m. that evening, they saw the
4 victim and the defendant emerged from the lobby of a
5 building struggling over the possession of a handgun.
6 And the struggle resulted in the death of the victim.
7 And in that case is 83 Illinois 2nd, 411. In this
8 case, there is no such corroboration to explain or
9 describe or fill out or establish the underlying
10 crime that was taking place. We don't have the
11 witness of the--we don't have the testimony of the
12 declarant which and of itself is not dispositive.
13 But we here we don't have that. We don't have the
14 911 tape and which again is not in and of itself
15 dispositive. But we don't have it. We don't have
16 any other witnesses who said they observed anything
17 like--we have a child's statement that somebody at
18 some point was tied up. But there are just too many
19 inferences that are required in this case for this
20 Court to conclude that the statement provide--the
21 statement provided by the declarant was of sufficient
22 particularity and that she provided sufficient detail
23 for the Court to conclude that there was sufficient
24 circumstantial evidence about the startling event or
25 the condition. And it's not clear what that was.

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1 Was it that she was tied up? If so, when did that
2 happen? We don't know. And again, time in and of
3 itself is not enough to create or destroy an excited
4 utterance. Here we believe it's 15 minutes. But 15
5 minutes from when to when? 15 minutes from a phone
6 call until the arrival of the police. But again,
7 it's not clear what happened before the phone call.
8 It's just clear that the phone call was made. And
9 again, anyone can look at the testimony that was
10 provided here and deduce what they think happened or
11 draw conclusions that it looks like a whole host of
12 different things happened. But it's the view of this
13 Court that there was not sufficient evidence
14 regarding the circumstances surrounding the alleged
15 victim's circumstances and the event that occurred or
16 the event that led to the excited or spontaneous
17 declaration. And although it appears there may be a
18 prima facie case established based on another element
19 of neglect, here I don't find an excited utterance.
20 So I note everybody's objection. I know that the
21 attorney for the child did an enormous amount of work
22 on this. And it was extremely helpful and
23 informative. But again as I said if many different--
24 there is a multitude of evidence that could have been
25 presented here that would have led to a different

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1 conclusion. And that it could have been any other
2 evidence that was discovered in the apartment that
3 served to corroborate any other evidence about what
4 happened before the call was made. And before that.
5 And while none of the individual factors alone, lack
6 of a 911 tape, lack of a second witness, lack of
7 information about the surrounding circumstances, lack
8 of connection between the alleged crime and the time
9 it took to make the telephone call, it's the Court's
10 view that collecting all--that viewing all of that,
11 all of those factors cumulatively render it
12 inappropriate to find the declarant statements to be
13 an excited utterance. And I note everybody's
14 objection and I know Ms. Verillo you said you would
15 then decide if you're going to call another witness
16 or what you're going to do. So then I don't know if
17 you want to have further discussion or I know that
18 you just--I think on the witness and exhibit list I
19 think there is my recollection is there was the one
20 police officer I think and the caseworker, I think.

21 MS. VERILLO: That is correct.

22 THE COURT: Okay.

23 MS. VERILLO: And I would ask though in,
24 you know, I have taken into what the Court's decision
25 and--